IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 36338 of 2007(A)

OS.1749/2003 of I ADDL.M.C.,ERNAKULAM
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PETITIONER:

M.C.GEORGE, S/O.CHACKO,
VACHANAM NIVAS, EROOR SOUTH,
TRIPUNITHURA.

BY ADV. SRI.SHAHUL HAMEED MOOPPAN

RESPONDENTS:
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1. THE CATHOLIC SYRIAN BANK LTD.,
THRIPUNITHURA BRANCH, THRIPUNITHURA,
KOCHI-682 301.

2. MOLLY GEORGE, W/O.M.C.GEORGE,
VEENANAM NIVAS, EROOR SOUTH, THRIPUNITHURA.

3. M/S.FUTURE AUTOMOBION,
G-32, PARAPPILLY LANE, PANAMPILLY NAGAR,
KOCHI-682 036, REP. BY ITS MANAGING PARTNER
MR.SAJI P.MATHEW.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 7.12.2007, THE COURT ON THE SME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 36338 OF 2007

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Dated this the 7th day of December, 2007.

J U D G M E N T

This writ petition is filed against the order of the 1st Addl. Munsiff, Ernakulam in E.P.201/06 in O.S.1749/03 whereby arrest is ordered against the first judgment debtor. The learned counsel for the writ petitioner contends that the Court below has not properly appreciated the evidence nor has entered into a finding that there has been negligence on the part of the judgment debtor to wipe off the liability. It is seen from the order that the judgment debtor is paying a rent of Rs.2,000/- for his house and Rs.1,000/- for his shop and is conducting a S.T.D. Booth. When it is shown that a S.T.D. Booth is conducted, the contention that it is not running is a matter which has to be proved by the judgment debtor and not by the decree holder. Therefore, one cannot find fault with the Court below in arriving at the decision regarding the means. Therefore, I confirm the finding on

means and I also hold that he has not paid the amount intentionally. But the learned counsel in all fairness submits that if some breathing time is given he can pay the amount in instalments. There is some force in that contention and there is no point in sending a person to civil jail and the Bank also will not be benefited by doing the same. Therefore, after confirming the finding on means I dispose of the writ petition as follows.

(1) The writ petitioner is directed to pay the amount in six monthly instalments commencing from 7th January, 2008.

(2) If he commits default of first instalment or later two consecutive instalments, he be forfeited the benefit conferred on him and the decree holder is at liberty to pray for issuance of warrant of arrest against the judgment debtor.

(3) Since I have given the instalment facility the order of arrest shall not be executed by the Court below till that time.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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